



LAWS OF MALAYSIA

REPRINT

Act 353

EMPLOYMENT (RESTRICTION) ACT 1968

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EMPLOYMENT (RESTRICTION) ACT 1968

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LAWS OF MALAYSIA

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EMPLOYMENT (RESTRICTION) ACT 1968

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LAWS OF MALAYSIA

Act 353

EMPLOYMENT (RESTRICTION) ACT 1968

An Act to provide for the restriction of employment in certain business activities in Malaysia of persons not being citizens and the registration of such persons and for matters connected therewith.

[1 July 1969, P.U. (B) 141A/1969]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

Short title and application

1. (1) This Act may be cited as the Employment (Restriction) Act 1968.

(2) This Act shall apply throughout Malaysia.

Interpretation

2. In this Act, unless the context otherwise requires—

“appointed date” means the date of coming into force of this Act;

“authorized person” means a person authorized by the Commissioner for the purposes of this Act;

“business” includes any form of trade, commerce, craftsmanship, calling, profession or other activity carried on for the purpose of gain;

“Commissioner” means the Commissioner of Employment appointed under subsection 3(1);

“employer” means any person who has entered into a contract of service to employ any other person as an employee and includes the agent, manager or factor of such first mentioned person and the word “employ” with its grammatical variations and cognate expressions, shall be construed accordingly;

“employment permit” means an employment permit issued under section 7;

“Minister” means the Minister charged with the responsibility for labour.

Officers

3. (1) For the due administration of this Act, there shall be appointed by the Yang di-Pertuan Agong a Commissioner of Employment, a Deputy Commissioner of Employment and such number of Assistant Commissioners as may be deemed necessary.

(2) The Minister may appoint such number of employment officers as he may consider necessary or expedient for the purposes of this Act.

(3) An employment officer appointed under subsection (2) shall be under the direction and control of the Commissioner.

PART II

RESTRICTIONS OF EMPLOYMENT OF PERSONS NOT BEING CITIZENS OF MALAYSIA

Application of Part II

4. (1) This Part shall apply only to the class or classes of persons or the category or categories of employment or business as may be specified in the Schedule.

(2) The Yang di-Pertuan Agong may by order amend or add to the Schedule.

Restrictions of employment of non-citizens

5. (1) (a) No person not being a citizen referred to in the Schedule shall be employed in any business in Malaysia or accept employment in any business in Malaysia unless there has been issued in respect of such person a valid employment permit.

(b) No person shall employ in Malaysia any person not being a citizen referred to in the Schedule unless there has been issued in respect of that latter person a valid employment permit.

(2) Subsection (1) shall have effect notwithstanding any other written law or of any term or condition of any contract or agreement.

(3) For the purposes of this section any person found performing any act normally performed by an employee in any place of employment shall be deemed to have been employed under a contract of service by the employer of that place of employment.

Application for employment permits and renewal of employment permits

6. (1) Every person not being a citizen referred to in the Schedule shall before commencing any employment or business described in that Schedule apply for an employment permit to the Commissioner and the application shall be in such form and shall contain such particulars as may be prescribed.

(2) An employment permit may on the expiry of its period of validity be renewed.

(3) Any person who desires to renew an employment permit shall make an application to the Commissioner or any authorized person in such form as may be prescribed.

Issue and renewal of employment permits

7. (1) Upon receipt of an application for an employment permit or an application for renewal of an employment permit under section 6, the Commissioner or any authorized person may in his discretion issue an employment permit in such form as may be prescribed or renew such employment permit and may impose such terms, conditions and restrictions as he may think fit.

(2) The Commissioner may at any time vary or add to any terms, conditions or restrictions in an employment permit.

(3) The Commissioner may in his discretion at any time and without assigning any reason refuse to issue or to renew an employment permit or cancel or suspend an employment permit.

(4) Any person aggrieved by a decision of the Commissioner under subsection (1), (2) or (3) may, within twenty-one days from the date of such decision, appeal to the Minister whose decision shall be final and shall not be subject to appeal or review in any court.

Particulars of new employment of non-citizens

8. An employer shall, before employing any person not being a citizen referred to in the Schedule, furnish the Commissioner with particulars of such employment and of such person in such form as may be prescribed.

Non-citizens in employment or engaged in business before the commencement of this Act

9. (1) Every person not being a citizen referred to in the Schedule who on the appointed date is employed in any of the category or categories of employment in any business described in that Schedule shall, within thirty days of the appointed date or such later date as the Minister may appoint, apply to the Commissioner for an employment permit and the application shall be in such form and shall contain such particulars as may be prescribed.

(2) Every person who on the appointed date is an employer of an employee in any of the category or categories of employment or business described in the Schedule shall, within thirty days of the appointed date or such later date as the Minister may appoint, furnish the Commissioner with particulars of persons not being citizens in his employment and particulars of such employment in such form as may be prescribed.

Termination of employment of non-citizens

10. (1) Notwithstanding any written law or of any term or condition of any contract or agreement, an employer of an employee in any

of the category or categories of employment or business described in the Schedule shall terminate the services of that employee within thirty days of his being notified in writing by the Commissioner—

- (a) that an employment permit has been refused in respect of that employee being a person in his employment on the appointed date; or
- (b) that the employment permit issued in respect of that employee has been cancelled, suspended or not renewed under subsection 7(3).

(2) Every employer referred to in subsection (1) who terminates the services of an employee or ceases to employ such employee pursuant to subsection (1) or for any other reasons whatsoever, shall notify the Commissioner in writing within fourteen days of such termination or cessation.

(3) The termination of the services of an employee pursuant to subsection (1) shall not be—

- (a) capable of negotiation by a trade union representing the person affected; or
- (b) the subject matter of a trade dispute or of conciliation proceedings or any method of redress whether under any written law or not.

Validity of employment permits

11. (1) Subject to subsections 7(2) and (3), an employment permit issued under this Part shall unless otherwise specified be valid only in respect of the particular employment and the employer specified therein.

(2) An employment permit shall unless sooner cancelled or suspended be valid for a period of not exceeding two years.

Onus of truth of application

12. The onus of proving the truth of the contents of an application for an employment permit under section 6 shall be on the person who makes the application.

PART III

REGISTRATION

Registration of non-citizens

13. (1) Subject to any exemption which may be granted under this Act, every person not being a citizen of the class or classes or in the category or categories of employment or business as may be specified in the notification under subsection (2) shall be registered under this section.

(2) The Yang di-Pertuan Agong may by notification in the *Gazette* specify the class or classes of persons not being citizens or the category or categories of employment or business, to whom or to which subsection (1) shall apply.

(3) Subject to subsections (1) and (2) every person not being a citizen shall apply for registration in the prescribed form to the Commissioner.

(4) The Commissioner shall keep and maintain a register of persons registered under this Part.

(5) The register to be kept and maintained by the Commissioner under subsection (4) shall be in such form as may be prescribed.

PART IV

GENERAL

Power of entry and request for production of documents, etc.

14. (1) An employment officer may if he has reason to believe that an offence under this Act has been or is being committed in any premises other than premises solely used as a dwelling place without warrant enter such premises.

(2) An employment officer may—

- (a) require any person, whom he has reason to believe to be in possession of any document or information relevant to the carrying out of this Act, to produce any such document or to give such information; or

- (b) question any person or require any person by notice in writing to attend at such time and at such place as may be stated in such notice in regard to any document or information which, in the opinion of the employment officer, is relevant to the carrying out of this Act, and which he believes to be in such person's possession or knowledge.

Loss of employment permits

15. (1) When an employment permit has been lost, destroyed or defaced, a person in respect of whom the employment permit has been issued shall forthwith report the same to the Commissioner or any authorized person and shall apply for a replacement employment permit.

(2) A replacement employment permit may be issued by the Commissioner or authorized person in place of the employment permit which has been lost, destroyed or defaced.

(3) Where a person aforesaid after notifying the loss of his employment permit recovers possession of such employment permit he shall forthwith notify the Commissioner or authorized person of such recovery.

(4) Where any person aforesaid recovers possession of his employment permit after he has been issued with a replacement employment permit under subsection (2), he shall forthwith return the employment permit so recovered for cancellation.

(5) Any person who finds or comes into possession of an employment permit other than his own shall forthwith deliver it to the Commissioner or any authorized person, or to the nearest police station, or post office.

False information

16. Any person who makes any statement or furnishes any information to the Commissioner or any employment officer or any authorized person under this Act or of any rules made thereunder which he either knows or has reason to believe to be false in any material particular or omits any particular which he either knows or has reason to believe is a material particular shall be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or both.

Custody and surrender of employment permits

17. (1) An employment permit issued in respect of a person shall not be transferable and shall be kept by him during the period of its validity.

(2) When an employment permit has been cancelled or has expired the person in respect of whom the employment permit was issued shall forthwith surrender the employment permit to the Commissioner or any authorized person.

Penalties

18. (1) Any person, who fails to comply with section 5 or 13 shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding one year or both.

(2) Any person who forges, alters or tampers with any employment permit shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment to a term not exceeding six months or both.

(3) Every omission or neglect to comply with, and every act done or attempted to be done contrary to this Act or of any regulations made thereunder, or any breach of the conditions and restrictions subject to or upon which an employment permit is issued under this Act, shall be an offence against this Act and the offender shall, if no penalty is expressly provided, be liable on conviction to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or both and, in the case of a continuing offence, to a further fine not exceeding one hundred ringgit a day:

Provided that no person shall be convicted under this section by reason only of the failure to comply with paragraph 14(2)(a) if within forty-eight hours after being so required he produces or gives the document or information in his possession.

Effect of contravention of section 10

19. Where in respect of the employment of a person not being a citizen there has been a contravention of section 10, such person shall not by reason only of such a contravention be deemed to be employed under an illegal contract of employment.

Exemption

20. (1) This Act shall not apply to—

- (a) members of any Visiting Force within the meaning of any law for the time being in force regulating Visiting Forces present in Malaysia.
- (b) persons duly accredited as diplomatic or consular representatives to Malaysia.
- (c) persons upon whom the immunities and privileges referred to in Part II or Part III of the First Schedule to the *Diplomatic and Consular Privileges Ordinance 1957 [Ord. 53 of 1957] have been conferred under that Ordinance;
- (d) private servants or other employees of persons referred to in paragraphs (a), (b) and (c) being employees recruited for such employment from the country of the Visiting Force or the country which the person referred to in paragraph (b) or (c) represents in Malaysia.
- (e) officers of any international organisation declared by the Yang di-Pertuan Agong under section 4 of the Diplomatic and Consular Privileges Ordinance 1957;
- (f) persons whose presence in Malaysia is sponsored by the Government.

(2) The Yang di-Pertuan Agong may by Order exempt any person or class of persons from any or all of the provisions of this Act.

Regulations

21. The Minister may make regulations generally for the carrying out of this Act, and such regulations may—

- (a) prescribe such fees or charges as may be necessary for the purposes of this Act;
- (b) prescribe the forms of register, applications and permits or other forms to be kept, used or issued;
- (c) provide for the procedure of replacement of lost or mutilated employment permits;
- (d) provide for the manner in which and the places at which application for employment permits shall be made;

*NOTE—The Diplomatic and Consular Privileges Ordinance 1957 [Ord. 53 of 1957] has since been repealed by the Diplomatic Privileges (Vienna Convention) (Amendment) Act 1999 [Act A1064]—see section 5 of Act A1064.

- (e) provide for the information and documents to be furnished for the purposes of applications for employment permits;
 - (f) provide for the inspection and production of employment permits;
 - (g) provide for the taking and recording of photographs of persons applying for employment permits;
 - (h) provide for the making of corrections and alterations in the register and employment permits;
 - (i) require the submission of any return by any person relating to the employment of persons not being citizens to whom the provisions of Part II have been applied in such form as may be prescribed;
 - (j) prescribe any act or omission in contravention of any such regulation shall be an offence;
 - (k) provide generally for the purpose of giving effect to this Act.
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SCHEDULE

[Section 4]

CLASS OR CLASSES OF PERSONS AND CATEGORY OR
CATEGORIES OF EMPLOYMENT

Every person not being a citizen employed in any business, industry or undertaking whatsoever including any Department of the Federal Government or State Government, any local authority and any statutory body.

LAWS OF MALAYSIA

Act 353

EMPLOYMENT (RESTRICTION) ACT 1968

LIST OF AMENDMENTS

Amending law	Short title	In force from
P.U. (A) 67/1972	Employment (Restriction) (Schedule) (Order) 1972	10-03-1972
Act A117	Employment (Restriction) (Amendment) Act 1972	04-04-1972

LAWS OF MALAYSIA**Act 353****EMPLOYMENT (RESTRICTION) ACT 1968****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
3	Act A117	04-04-1972
5	Act A117	04-04-1972
9	Act A117	04-04-1972
11	Act A117	04-04-1972
SCHEDULE	P.U. (A) 67/1972	10-03-1972

